

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Article 3
Add Chapter 5.5
Add Section 52.10

Title 14, California Code of Regulations

Re: Optimum Yields/Allocations for Sheephead, Cabezon, and Greenling Fisheries

I. Date of Initial Statement of Reasons: February 5, 2002

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: | December 7, 2001 |
| | | Location: | Long Beach, CA |
| (b) | Discussion Hearing: | Date: | March 8, 2002 |
| | | Locations: | San Diego, CA |
| (c) | Adoption Hearing: | Date: | April 5, 2002 |
| | | Location: | Long Beach, California |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

1. Need for In-Season Action

In the summer and fall of 2001, the Fish and Game Commission (Commission) took three separate emergency actions to close the commercial nearshore fisheries for sheephead, cabezon and greenlings. These closures were necessary because the commercial allocations for these species, established by the Commission in December 2000, were exceeded and the fishery optimum yields (OY's) were expected to be reached or exceeded. Emergency action was necessary because neither the OY nor the mechanism for closing the fishery in the event an allocation is reached was established in regulation.

The emergency regulatory process is problematic in that it does not provide a rapid method for closing these fisheries, and delays allow for continued harvesting of fish in excess of the established allocations and possibly the OY's. In 2001, these delays resulted in additional catches which significantly exceeded

the commercial allocations for each of these species.

The proposed regulations would provide authority for the Department of Fish and Game (Department) to take action as a routine management measure to close either or both recreational and commercial sectors of the sheephead, cabezon and greenling fisheries upon projected attainment of established OY's and fishery allocations. Not only would this regulation expedite the process of closing these fisheries, it will also help reduce the Commission's regulatory workload by eliminating the need to adopt time-intensive emergency measures.

Additionally, landings information available for 2001 suggest that emergency rulemaking action would be necessary to close some sectors of these fisheries in the spring or summer of 2002. As emergency filings are only effective for 120 days, the Commission would need to re-adopt the emergency rule at the end of the first 120 day period, or complete a conventional rulemaking to ensure the closures would remain effective through the end of the calendar year.

Although emergency closure actions were limited to commercial fisheries in 2001, best recreational catch estimates to date (which are incomplete for November and December) indicate the sport allocations for the cabezon and greenling fisheries were also exceeded in 2001, and sheephead was approaching the allowable recreational harvest level. Furthermore, for all three species, the combined commercial and recreational harvest significantly exceeded the established OY. Should these catch rates be repeated in 2002, the Commission could face a total of six emergency closure actions upon reaching fishery allocations for each sector of the sheephead, cabezon and greenling fisheries this year unless an alternate process is established to close them.

2. Background on Proposed OY's and Allocations

In October 2000, the Commission approved OY harvest levels at 50 percent of the Allowable Biological Catch (ABC), which was defined as the average annual catch of each species taken by both sport and commercial fisheries between 1993 and 1998. The allocations to each sector of the fishery adopted by the Commission closely (but not exactly) approximated the proportion of catch between the recreational and commercial fisheries during the years 1983-1989 and 1993-1999. The resulting allocations were highly restrictive to the commercial fishery relative to catches documented in the late 1990's. Consequently, additional interim regulations to reduce harvest levels for commercial fisheries (i.e. closing months and days of the week and increasing minimum size limits), were designed at this time to achieve these allocations.

In December of 2000, the Department presented estimates of catch for both the commercial and recreational fisheries based on the projected impacts of these new interim regulations, coupled with anticipated catch by the recreational fisheries in 2001. This data indicated these regulations should have slowed commercial catch to a point that no additional regulatory action would have been needed to keep within these commercial harvest limits. For the recreational greenling and cabezon fisheries, this projected catch amounted to less than the recreational allocations approved in October.

Consequently, the Commission approved the use of these projections of annual catch for each sector of the fishery as *acceptable adjustments to the original allocations* (agreed to in October of 2000) for the 2001 fishing season, with the understanding the issue would be addressed comprehensively in the forthcoming Nearshore Fishery Management Plan, slated for adoption in December of 2001.

In the summer and fall of 2001, current catch information indicated that projections for both the commercial and recreational fisheries made in 2000 did not accurately predict fishery behavior in 2001, suggesting the interim restrictions on commercial catch did not fully achieve their intended purpose. Subsequent emergency rulemaking actions were taken to close the commercial fisheries for all three species. The OY and allocation numbers used in filing the emergency actions were, in fact, these adjusted numbers of projected catch presented in December rather than the original allocations described in October (with the exception of the cabezon OY, where the projected catch would have been approximately 20,000 pounds less, but the original OY value was used to close the commercial fishery).

During discussions of the Commission's Marine Subcommittee and Department staff in January 2002, members of the Marine Subcommittee clarified the scope and intent of this rulemaking action. They indicated it should not re-open the discussion on what level of OY was preferred, nor provide for reconsideration on allocation between sport and commercial fisheries, but should simply establish in regulation what had already been agreed to by the Commission during the adoption of interim nearshore fishery management regulations.

At the same time, the group acknowledged that several different OY and allocation values for these three species have been approved and used for management of sport and commercial fisheries by the Commission since the fall of 2000, which may lead to confusion by user groups and the public. Furthermore, none of the interim OY or allocation values were ever specified in regulation. Members of the Commission's Marine Subcommittee reiterated that the revised allocation numbers that were approved in December of 2000 and used for management in 2001 earmark the OY's and allocations for interim

management until regulations emerging from the Nearshore Fishery Management Plan supercede them.

In promulgating proposed Section 52.10, in order to allow for the OY to be set at the desired 50 percent ABC for each species, members of the Marine Subcommittee made some minor modifications to these numbers as follows: 1) In the case of sheephead, as the projected catches from December of 2000 fall short of the 50 percent target ABC, the original OY and allocation values that were approved in October are the values specified in the proposed regulation. 2) Similarly, the projected cabezon catch from December 2000 would fall below the 50 percent ABC value by approximately 20,000 pounds. This volume is added to the recreational fishery projection (rather than the commercial projection) based on the original allocation value from October 2000, which was greater than the projected catch. This results in a recreational cabezon allocation of 84,330 pounds rather than 63,608 approved in December of 2000.

3. Proposed OY and Allocation Values

Proposed Section 52.10 (a) on Annual Optimum Yields would specify in regulation the OY values for nearshore fish stocks adopted by the Commission in December 2000. These include 223,483 pounds for California sheephead, 178,728 pounds for cabezon, and 39,823 pounds for greenlings.

Annual allocations established for the 2002 fishing season and subsequent years are specified as follows in the proposed regulations: for sheephead, the recreational allocation is 135,524 pounds, and the commercial allocation is 87,959 pounds; for cabezon, the recreational allocation is 84,330 pounds, and the commercial allocation is 94,398 pounds; and for greenlings, the recreational allocation is 26,403 pounds and the commercial allocation is 13,420 pounds.

4. Fishery Closure Process

Proposed Section 52.10 describes the general process the Department will follow in making projections of commercial and recreational catches of sheephead, cabezon and greenling using landing receipt information and the best available scientific data. Under the proposed regulatory change, upon projected attainment of any allocation the Department shall notify the Commission, commercial permittees and the public of an upcoming closure via Department news releases and/or notification letters at least 10 days in advance of the specified date.

5. Organizational Content

The creation of a new Chapter 5.5 (Fishery Management Plans) and Article 3

(Nearshore Fishery) during adoption of proposed Section 52.10 is to maintain consistency with regulations currently being developed to implement Fishery Management Plans (FMP's). New Chapter 5.5 and Article 3 were originally proposed to be created in conjunction with adoption of the White Seabass FMP (contained in Articles 1 and 2) followed by adoption of the Nearshore FMP (Article 3). Delays in adoption of those plans has deferred creation of Chapter 5.5 and associated Articles 1, 2, and 3. Therefore, adoption of Section 52.10 and new Article 3 within new Chapter 5.5 will simply precede the adoption of FMP implementing regulations. In informal discussions with OAL staff, this has been determined consistent with organizational standards for regulations adopted under California's Administrative Procedure Act.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 97, 7056, 7071, 8585.5, 8587, and 8587.1, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

No new or specific technologies or equipment are associated with the proposed regulations.

(d) Identification of Reports or Documents Supporting Regulation Change:

Recommendations for the Interim Management of the Nearshore Fishery. Report from the Department of Fish and Game Prepared for the California Fish and Game Commission Meeting, December 8, 2000, Eureka, CA.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public discussions have been held in association with the proposed regulations.

IV. Description of Alternatives to Regulatory Action:

(a) Major Alternatives to Regulation Change:

1. The use of alternate OY and allocation numbers that were utilized to manage the sheephead, cabezon and greenling fisheries in 2001 was considered in developing proposed Section 52.10. However, the values outlined in the

proposed regulations have been selected by members of the Commission's Marine Subcommittee for managing fisheries in 2002 and beyond until adoption of a Nearshore Fishery Management Plan.

2. Alternative language which would establish a mechanism to allow for reallocation of a portion of the OY between commercial and recreational fishery sectors once allocations are reached based on tracking catch volume were also considered in discussions held by the Commission's Marine Subcommittee. However, because of the controversial nature of the subject matter and the existing Nearshore Fishery Management Plan process which will focus attention

on all matters pertaining to allocation, the Commission did not wish to consider developing this alternative in this proposed regulation.

Another consideration in that decision was the fact that the proposed regulations will need to be effective sometime in the summer months in order to provide the Department the authority to close these fisheries upon projected attainment of some of these allocations. Including reallocation provisions at this time would likely require a more lengthy rulemaking process with an extended public comment period and additional discussion meetings, which would conflict with the goal of having regulations in place to allow the Department to close these fisheries upon attainment of the allocations independent of Commission action in 2002.

(b) No Change Alternative:

As described in Section III(a), not adopting the proposed regulations would demonstrate an intention by the Commission to continue to rely on emergency rulemaking action to close fisheries once allocations are reached. Furthermore, the time needed to close a fishery under the emergency rulemaking process would allow for additional harvest to continue. Alternatively, under authority provided in the proposed regulations, the Department would implement the closures on a more timely basis.

(c) Consideration of Alternatives:

In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the

environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action - Economic, Jobs, Local Agencies, State Agencies, Housing Costs and School Districts:

The Commission has assessed the potential for significant adverse economic impacts that might result from the proposed regulatory action and it has made the following determinations relative to the required statutory categories:

(a) Significant Adverse Economic Impact on Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as these regulations only serve to establish harvest policies in regulation that were already effective in 2001, as well as provide a mechanism for closing the fisheries once allocations are reached.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None

(f) Programs mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None

(h) Affect on Housing Costs: None

Informative Digest/Plain English Overview

In December of 2000, the Fish and Game Commission adopted annual Optimum Yields (OY) for sheephead, cabezon and greenling fisheries as part of a package of interim nearshore fishery management measures. The Commission also approved recreational and commercial allocations for each species.

In the summer and fall of 2001, the Commission took three separate emergency actions to close the commercial nearshore fisheries for sheephead, cabezon and greenling because their allocations were exceeded and the fishery OY's were threatened with being exceeded. Emergency action was necessary because neither the OY nor the mechanism for closing the fishery, in the event an allocation was reached, was established in regulation.

The proposed regulations would direct the Department to take action to close either or both recreational or commercial sectors of these fisheries upon projected attainment of OY's and fishery allocations specified in regulation.

The proposed regulations would specify the OY values for nearshore fish stocks adopted by the Commission in December 2000. These include 223,483 pounds for California sheephead, 178,728 pounds for cabezon, and 39,823 pounds for greenlings. Allocation values would be established as follows: for sheephead, the recreational allocation is 135,524 pounds, and the commercial allocation is 87,959 pounds; for cabezon, the recreational allocation is 84,330 pounds, and the commercial allocation is 94,398 pounds; and for greenlings, the recreational allocation is 26,403 pounds and the commercial allocation is 13,420 pounds.

Maintaining the status quo situation would continue the task of undertaking up to six emergency closures on each component of each of these fisheries, which is cumbersome for the Commission, Department and the Office of Administrative Law. Furthermore, even with emergency actions, fisheries would continue to operate beyond prescribed harvest levels until the closures are effective.

The proposed regulations also describe the procedure the Department will follow in making projections of commercial and recreational catch of sheephead, cabezon and greenling using landing receipt information and the best available scientific data. Upon projected attainment of any allocation, the Department shall notify the Commission, commercial permittees and the public of an upcoming closure via Department news releases and/or notification letters at least 10 days in advance of the specified date.

Regulatory Language

Section 52.10 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, California Code of Regulations, to read:

Chapter 5.5. Fishery Management Plans.

Article 3. Nearshore Fishery.

Section 52.10. Take of Sheephead, Cabezon, and Greenling.

(a) Optimum Yields. Based on optimum yields specified for each calendar year, catch may not exceed the following amounts:

(1) California sheephead, 223,483 pounds;

(2) cabezon, 178,728 pounds; and

(3) greenlings of the genus *Hexagrammos*, 39,823 pounds.

(b) Allocation. Annual harvest of these species is allocated between sport and commercial fisheries as follows:

(1) California sheephead.

(A) The recreational fishery is allocated 135,524 pounds.

(B) The commercial fishery is allocated 87,959 pounds.

(2) Cabezon.

(A) The recreational fishery is allocated 84,330 pounds.

(B) The commercial fishery is allocated 94,398 pounds.

(3) Greenlings of the genus *Hexagrammos*.

(A) The recreational fishery is allocated 26,403 pounds.

(B) The commercial fishery is allocated 13,420 pounds.

(c) Mechanism for Fishery Closures. The department will estimate from the current trends in catch and using the best available scientific information the time at which the commercial or recreational fishery allocation for sheephead, cabezon, or greenlings specified in subsection (b) will be reached. The department will close the fishery at the time the allocation is reached or is projected to be reached prior to the end of the calendar year.

(d) The department shall give the public and the commission no less than 10 days notice of any recreational fishery closure pursuant to this Section via a department news release.

(e) The department shall give Nearshore Fishery Permit holders no less than 10 days notice of any commercial fishery closure pursuant to this Section via a notification letter sent to the permittee's address on file with the department. The department shall give the public and the commission no less than 10 days notice of any commercial fishery closure pursuant to this Section via a department news release.

NOTE

Authority cited: Sections 200, 202, 205, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 97, 7056, 7071, 8585.5, 8587, and 8587.1, Fish and Game Code.
